

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6594

Joint Petition of Verizon New England Inc., d/b/a)
Verizon, Vermont and Verizon Advanced Data, Inc.)
for Approval of a Transfer of Certain Assets)

Order entered: 1/9/2002

I. INTRODUCTION

On October 24, 2001, Verizon New England, Inc., d/b/a Verizon Vermont, ("Verizon") and Verizon Advanced Data, Inc. ("VADI") (collectively "Petitioners") jointly filed a petition ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 109, for approval of a transfer of certain assets used to provision intrastate advanced data services from VADI, a non-dominant, structurally separate affiliate, to Verizon, allowing Verizon to provide the intrastate advanced services currently offered by VADI. The Petitioners also request that the Certificate of Public Good (CPG No. 573-CR) to provide telecommunications services in Vermont held by VADI be revoked pursuant to 30 V.S.A. § 231.

On December 26, 2001, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the transfer of assets and revoke VADI's CPG, because the proposed transactions would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department recommendation is subject to the following conditions. First, Petitioners should be required to file with the Board any special contracts, not previously filed with the Board, in a manner consistent with the alternative regulation plan applicable to Verizon. Second, Verizon should be required to file tariff revisions to offer Frame Relay and ATM services with the Board for approval.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following

findings of fact.

1. Verizon is an incumbent local exchange carrier authorized to provide telecommunications services in Vermont. Petition at 1.

2. VADI is a structurally separate affiliate of Verizon authorized to provide telecommunications services in Vermont. VADI was granted CPG No. 573-CR on January 24, 2001. Petition at 1-3.

3. VADI was formed pursuant to a specific requirement contained in the FCC's order ("Federal Merger Order") approving the merger of Bell Atlantic Corporation and GTE Corporation, which required Verizon to provide certain Advanced Services through a structurally separate affiliate. Petition at 1-4.

4. On January 9, 2001, the United States Court of Appeals for the District of Columbia vacated the FCC's reasoning supporting this structural separation in *Association of Communications Enterprises v. Federal Communications Commission*, 235 F. 3d 662 (D.C. Cir. 2001). Petition at 1, 5-6.

5. The Federal Merger Order specifically provided for the return of the Advanced Services assets to Verizon in the event the FCC's finding regarding the data affiliate's non-dominant carrier status was not sustained on appeal. Petition at 2, 5.

6. Verizon has obtained the agreement of the Federal Communications Commission that the transition can commence immediately. Petition at 5-6.

7. The Federal Merger Order sets certain transitional obligations that Verizon must follow for 48 months after June 31, 2000, (*sic*) in order to assure appropriate operational parity. These obligations require Verizon to provide Advanced Services through a separate office or division within Verizon, and that office or division must operate on an arms-length basis with Verizon. Verizon will follow all required procedures. Petition at 6.

8. The proposed transfer of assets will be accomplished by the return to Verizon of all plant and equipment (including some supporting assets) which are currently dedicated to VADI's provision of intrastate Advanced Services. Those assets include: (a) central office assets, plug-ins and terminating equipment; (b) personal computers and office furniture; and (c) associated tools. The net book value of the assets is \$2,736,983.57. Petition at 7-8.

9. For the Advanced Services assets purchased from Verizon by VADI in the earlier transaction in exchange for shares in Verizon Ventures III, Inc., Verizon shall either surrender the

Verizon Ventures III shares as compensation for those assets, or receive the assets as a dividend-in-kind on those shares. For all assets that have been purchased by VADI subsequent to the earlier asset transfer, Verizon will purchase such assets for cash. Petition at 8.

10. As a result of the asset transfer, VADI will no longer operate as a telecommunications provider in Vermont and consequently Petitioners request revocation of VADI's CPG. Petition at 2.

11. The customers of VADI receiving service under contract with VADI will continue to receive Advanced Services under the same terms and conditions from Verizon through assignment of those contracts to Verizon. Verizon also proposes to issue new tariffs which conform substantially to the terms and conditions of VADI's tariffs. Accordingly, the transfer of assets should cause no inconvenience to Vermont consumers. Petition at 8-9.

12. The proposed transaction should result in a more efficient corporate structure while maintaining appropriate operational parity to CLECs, thus enhancing the ability of Verizon to offer competitively priced services in the Vermont interexchange telecommunications marketplace and, thus, promoting the public interest. Petition at 2, 9.

III. DISCUSSION

The transfer or sale of assets requires approval by the Board under 30 V.S.A § 109. The statutes condition approval of a sale of assets or merger upon a finding that the sale of assets will promote the public good (30 V.S.A. § 109). That standard is met in this case.

Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not make a sale . . . in any one calendar year constituting ten percent or more of the company's located within this state . . . nor merge nor consolidate . . . " without approval of the Board.

After reviewing the Petition, 30 V.S.A §109 applies to the transfer of assets of VADI, which is a certificated telecommunications carrier in Vermont, to Verizon. We further conclude that the transfer of assets will not detrimentally affect customers of VADI because Verizon intends to issue new tariffs which conform substantially to the terms and conditions of VADI's tariffs. In addition, the transfer of control should result in a more efficient corporate structure while maintaining appropriate operational parity to CLECs, thus enhancing the ability of Verizon to offer competitively priced services in the Vermont interexchange telecommunications

marketplace. The transfer of assets, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 109 and should be approved.

Petitioners have also requested that the Board revoke the CPG held by VADI, in that VADI will, as a result of the transfer of assets, no longer operate in Vermont. No opposition to this request has been raised. The Board finds the reasons articulated by the Petitioners in support of the request to be convincing. This finding, together with the fact that no opposition to the filing has been registered with the Board, leads us to conclude that VADI's CPG should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require that a hearing be held before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant the Petitioners' request without a hearing.

IV. CONCLUSIONS

The transfer of assets of VADI to Verizon and the subsequent revocation of VADI's CPG to provide telecommunications services, should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 109.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The transfer of assets of Verizon Advanced Data, Inc. to Verizon New England Inc., d/b/a Verizon Vermont, will promote the public good and, therefore, is approved.
2. Effective upon the completion of the sale of assets of Verizon Advanced Data, Inc. to Verizon New England Inc., d/b/a Verizon Vermont, the Certificate of Public Good (CPG No. 573-CR) issued to Verizon Advanced Data, Inc. on January 24, 2001, is revoked.
3. Petitioners shall file a letter notifying the Board of the completion of the transaction within one week of such completion.
4. Verizon New England Inc., d/b/a Verizon Vermont, shall file revisions to its tariff to include the existing service offerings of Verizon Advanced Data, Inc., within one week of the completion of the transaction.
5. Petitioners shall file with the Board any special contracts, not previously filed with the

Board, in a manner consistent with the alternative regulation plan applicable to Verizon, within one week of the completion of the transaction.

7. A Certificate of consent to the sale of assets of Verizon Advanced Data, Inc. to Verizon New England Inc., d/b/a Verizon Vermont, shall be issued.

DATED at Montpelier, Vermont, this 9th day of January, 2002.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: January 9, 2002

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.